

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

MACMA No.1387 of 2010

JUDGMENT:

The appeal is preferred by the respondent Corporation questioning the correctness of the award passed by the learned Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Visakhapatnam in M.V.O.P.No.1099/2008, dated 13.04.2010, by and under which the Tribunal awarded a total compensation of Rs.7,00,000/- for the death of one Marrapu Bhushanarao in an accident said to have taken place on 15.11.2007.

The brief facts of the case are that on 15.11.2007 the deceased was proceeding on his motorcycle bearing registration No.AP31AN-2897 from Polipilli centre towards Hastinapuram Ayyappa Peetham and when reached Bandarupalem village at about 1.30 p.m the RTC bus, bearing registration No.AP9Z-8259, driven by the 1st respondent in a rash and negligent manner came in opposite direction and hit the deceased, as a result, the deceased fell down on the road and died on the spot. The claimant is the mother of the deceased.

The Corporation filed counter denying the material allegations and contended that the deceased himself came in high speed in the single road and even though the driver of the bus stopped the bus, the deceased hit the bus and hence there is no negligence on the part of the driver of the bus.

On behalf of the claimants, PWs 1 and 2 were examined and Exs.A1 to A10 were marked. On behalf of the respondents, DW 1 was examined and no documentary evidence was adduced.

The Tribunal after considering the oral and documentary evidence held that the claimant being the mother of the deceased is entitled to the compensation as claimed and granted the same. Aggrieved by the same, the Corporation filed the present appeal.

The learned counsel for the appellant submits that the Tribunal erred in holding that the person who drove the RTC bus is responsible for the accident and therefore, the Corporation ought not to have been liable to pay the compensation,. He further submits that the Tribunal erred in taking the monthly income of the deceased as Rs.13,000/- and determined the compensation and the quantum of compensation awarded by the Tribunal is excessive and exorbitant.

On the other hand, the learned counsel for the respondent/claimants submits that the Tribunal has given appropriate finding in so far as the rashness and negligence on the part of the driver of the RTC bus. In so far as the quantum of compensation is concerned, he submits that, even though the claimant is entitled more compensation, but she claimed only Rs.7 lakhs. He further submits that having come to the conclusion that the claimant is entitled to compensation more than that has been claimed, the Tribunal ought not to have restricted to Rs.7 lakhs and therefore, the award of the Tribunal cannot in any way said to be excessive.

Heard both sides and perused the material on record.

The fact that the deceased when in Ayyappadheeksha was proceeding to temple on the date, time and place, as mentioned, met with an accident involving his motorcycle and the RTC bus, being driven by RW 1. The contention of the Corporation is that the accident took place due to the rash and negligent driving on the part of the deceased

motorcyclist cannot be accepted, for the reason that the eyewitness PW 2 has categorically asserted that it is the driver of the RTC bus who is responsible for the accident. Even though the Corporation examined the driver of RTC bus as RW 1, but his evidence is self inculpatory and he intended to wriggle out of the allegations made against him that he is responsible for the accident. In addition to the oral evidence of PWs 1 and 2, there is documentary evidence produced by the claimant in the shape of Exs.A1 to A5 pertaining to the crime, which were prepared by the investigating agency and these documents *prima facie* show that the accident took place due to rashness and negligence on the part of the driver of the RTC bus.

Upon appraisal of the evidence on record, I see no reason to hold that the deceased is in any way responsible for the accident and that the contention of the learned counsel for the appellant that the driver of the Corporation is not liable for the accident cannot be accepted.

With regard to quantum of compensation, no doubt the Tribunal has come to the conclusion that the claimant being the mother of the deceased is entitled to more compensation than has been claimed, however, in view of the claim made by the claimant, the Tribunal restricted the award to Rs.7,00,000/-.

In determining the compensation, the Tribunal has taken into consideration the fact that the deceased was not only an income tax assessee, but also having licence of a wine shop as per Exs.A6 to A8 and as per income tax returns the total income of the deceased was shown as Rs.1,45,400/-. Therefore, the Tribunal has rightly taken into consideration Exs.A6 to A8 and held that the income of the deceased has been satisfactorily proved to be Rs.13,000/- per month. Having done so, the

Tribunal has however erred in taking the multiplier by taking into consideration the age of the claimant being the mother of the deceased instead of the age of the deceased.

As a matter of fact, the Tribunal ought to have awarded compensation what the claimant is entitled to, but since the claimant made claim only for Rs.7,00,000/- the Tribunal restricted the same and awarded the compensation as claimed, which was not at all challenged.

Upon perusing the material on record, I see no reason to interfere with the findings of the Tribunal and they do not warrant any interference. There are no merits in the appeal and the same is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

Date: 21.06.2017
Dsr

M.S.K.JAI SWAL,J

